

March 12th, 2010

Re: IB Docket No. 07-293

March 10th, 2010

To The Commission:

Sirius XM Radio purchased a portion of spectrum in the 2320 MHz to 2345 MHz range at FCC auction for \$170 million dollars and then poured billions of dollars into infrastructure, satellites, content, management, etc. Sirius XM is still a fledgling company. To date, Sirius XM Radio has Net Operating Losses (NOLs) of approximately 8 BILLION dollars and have only recently reported their first ever profitable quarter. This has been over a decade in the making.

Years after Sirius XM radio purchased the spectrum licenses and began building out their infrastructure, the FCC auctioned off another portion of spectrum surrounding that of SDARS in the 2305-2320 MHz and the 2345-2360 MHz ranges. At the onset of this auction, the rules surrounding this spectrum were quite clear: NO INTERFERENCE TO SDARS WOULD BE ALLOWED. The FCC forthrightly and unequivocally stated that protecting Satellite Radio may ?make mobile operations in the WCS spectrum technologically infeasible.? With this in mind, companies submitted their bids for spectrum. As a result, the entire WCS spectrum was auctioned for only 14 million dollars. This chunk of spectrum is 5MHz larger than the SDARS spectrum and yet for \$154 million less than what the SDARS spectrum sold for. The only explanation for this is because of the restrictions placed upon the spectrum at the time of auction ? restrictions that the companies who purchased this spectrum knew well ahead of time, and purchased anyways.

Fast forward to today. The FCC is considering a proposal to allow the WCS coalition to begin using the spectrum with limited restrictions. As stated by Mel Karmazin, CEO of Sirius XM Radio, ?We were told bluntly that the staff proposal would enable the deployment of WCS ?usage models? that would cause interference to satellite radio consumers.?

Mel Karmazin continues, ?The staff offered no details about any sort of coordination or complaint process that would identify and eliminate sources of interference created by WCS networks and particularly mobile transmitters.?

In a response to the FCC dated March 9th regarding Mr. Karmazin?s letter, Paul J. Sinderbrand, Counsel to the WCS Coalition writes, ? Our fear, quite frankly, is that these restrictions could have the unintended, and unnecessary, consequence of effectively precluding the use of much of the WCS band for viable mobile broadband services.? What Mr. Sinderbrand fails to mention is that this is

basically what the FCC said was a possibility when the spectrum was auctioned in the first place ? and something that the companies knew point blank going into the auction. Again, I refer to the quote from the FCC that states the FCC forthrightly and unequivocally stated that protecting Satellite Radio may ?make mobile operations in the WCS spectrum technologically infeasible.?

The spectrum was auctioned with the full understanding of all parties that this frequency was going to post serious technological difficulties with implementation. The WCS coalition now basically is asking the FCC to waive those restrictions. The FCC proposal contains no verbiage as to who is going to monitor for interference issues, who will be responsible for determining where the interference issues are coming from, and absolutely no repercussions as to what the penalty will be for these interference issues. There are over 18.7 million paying subscribers to Sirius XM radio and over 35 million daily listeners who stand to have their service affected by these interference issues, myself included.

Mr. Sinderbrand writes ?[T]he preliminary proposals advanced by the staff will more than adequately protect Sirius XM?s subscribers from harmful interference.? Since the WCS coalition believes that there will be no interference issues, I am sure they will not mind a few more rules imposed regarding repercussions for such interference that they insist will not happen.

1) Upon report and confirmation of negative interference, all transmissions in adjacent spectrum will be halted completely and immediately. These transmissions may not be restarted until the issue is discovered and corrected completely.

2) The WCS Coalition will reimburse Sirius XM the full cost of any subscriber who states interference issues as their reason for cancelation of services. The full cost of the subscriber shall be calculated as the sum of a)the expected payments of subscription fees and Royalty Fee Recovery expenses that would have likely been paid out over the life of the subscription (based on the average length of subscription at the time of cancelation) and b) Subscriber Acquisition Costs (SAC) for the subscriber at the time the radio was initially activated as reported in the Sirius XM quarterly reports.

3) The WCS Coalition will reimburse Sirius XM the full cost of any subscriber who calls to cancel but is kept active through promotional subscription and/or any other form of consideration (discounted radio/accessories, free internet, free Best Of subscription, etc.).

A final alternative would be to re-auction the spectrum under the new proposed rules (which now makes the spectrum much more valuable and should command much higher prices) and allow Sirius XM to be involved in this auction as a way to protect themselves from such harmful interference.

Respectfully Submitted,

Robert J. Whitcomb